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Government Intervention in Labour Disputes in Canada

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DEPARTMENT OF LABOUR, CANADA

Minister—Honourable G. D. ROBERTSON Deputy Minister—H. H. WARD

BULLETIN No. 11. INDUSTRIAL RELATIONS SERIES

GOVERNMENT INTERVENTION IN LABOUR DISPUTES IN CANADA

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NOTE.—An article under this title by Margaret Mackintosh of the Department of Labour, Ottawa, appeared in *Queen's Quarterly*, January-March, 1924. At that time the Industrial Disputes Investigation Act, which was dealt with at some length in the article and which is the best known of Canadian laws for the settlement of industrial disputes, was before the Supreme Court of Ontario in an appeal case arising from an action brought by the Toronto Electric Commissioners to restrain a board of conciliation and investigation appointed to deal with a dispute between the Commission and its employees from exercising the functions conferred on it by the Act. When the Judicial Committee of the Privy Council gave judgment in the case which had been appealed to it, the article was brought up to date and published as a supplement to the LABOUR GAZETTE, March, 1925. It has now been revised and extended to include amendments since 1925.

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Government Intervention in Labour Disputes in Canada

Concerted action on the part of workmen to better their conditions was prohibited in England during the latter part of the eighteenth century by statutes applying to certain industries and by a general statute of 1799. With the repeal of these Combination Acts in 1824, the history of collective bargaining by trade unions with employers may be said to begin and the right to strike to be definitely established. Legislation designed to prevent or settle disputes between employers and trade unions dates from about the middle of the nineteenth century and was based on previous experience in dealing with individual disputes or in promoting collective bargaining. An Arbitration Act applying to the cotton industry and utilizing the services of justices of the peace had been enacted in 1800 but it was construed as confined to disputes regarding work already done. A similar statute of 1824 was of general application but proved even more abortive. With the growth of trade unions after 1824, the statutory scheme sank into oblivion and methods for the settlement of disputes regarding working conditions were evolved in the large industries by the employers and trade unions themselves. Later, laws providing for conciliation and arbitration in industrial disputes were enacted based partly on the principles underlying the voluntary joint committees, such as had grown up in the English cotton and hosiery industries, and partly on the old French system of Conseils de Prud'hommes, created under the Napoleonic Code, which had become the recognized method of settlement of differences regarding existing contracts between employers and individual employees not only in France but in Germany, Belgium and other countries.

Intervention by the state in the settlement of industrial disputes was first permitted in the form of mediation by a Government officer at the request of the two parties to a dispute. When this method of conciliation was of no avail, state intervention at the request of one of the parties was provided for, but the means adopted were still conciliatory, an informal attempt being made to bring the parties together. Arbitration, or the bringing in of an adjudicator, when conciliation failed, was the next step, both parties agreeing to submit their differences to one or more arbitrators, or to a committee composed of one or more representatives of the employer together with an equal number representing the workmen and a chairman with whom the ultimate decision usually rested. When the parties refused to agree to arbitration, an inquiry might be held by an independent tribunal and the findings made public. Reliance came to be placed on the influence of public opinion in effecting a settlement and publicity was in such cases given to the causes and nature of the dispute as determined by the investigating body. In the majority of the older industrial countries, laws for the settlement of industrial disputes have not gone beyond this stage.

In the newer countries, New Zealand, Australia, the United States of America and Canada, a coercive element has been added to the merely permissive character of the earlier legislation regarding strikes and lockouts. Compulsion in industrial arbitration may be applied at either of two points: in the reference of a dispute to arbitration before a stoppage of work or in the application of the award or in both these matters. In New Zealand, compulsory arbitration with restrictions on the right to strike or lockout is the rule over the whole field of industry. In Australia, compulsory arbitration was first adopted but later statutes have laid stress on conciliation rather than coercion,

although disputes not otherwise settled must be submitted to arbitration and the awards of the arbitration courts are enforceable at law. The United States Railway Labour Act of 1926 provides for compulsory investigation of labour disputes on interstate railways when the conciliation machinery has failed to bring about an agreement between the parties. Any change in working conditions during the period allotted for investigation is prohibited.

In the Industrial Disputes Investigation Act, enacted by the Parliament of Canada in 1907, a distinction was drawn between what may be termed "private" industries and those industries in which the community has such an immediate interest that public opinion has demanded that there shall be no stoppage in such industries until all means of conciliation have been exhausted and the public has been informed as to the nature of the dispute. Under the Industrial Disputes Investigation Act there is no compulsory award as under the Australia and New Zealand laws, but the Act provides for compulsory investigation, and a strike or lockout is prohibited pending a report by a Board of Conciliation and Investigation. After such a report has been submitted, both parties are free to accept or reject the report. The constitutional validity of the Industrial Disputes Investigation Act was brought before the courts in 1923 and, on appeal to the Privy Council, it was declared in 1925 to be *ultra vires* of the Dominion Parliament. Following this decision the Act was amended, first, to confine its operations to certain classes of disputes clearly within Dominion jurisdiction, and, second, to enable its application to disputes within the exclusive legislative jurisdiction of any province which might be made subject to the Act by legislation of the province. At the present time, all the provincial legislatures, except those of Ontario, Quebec and Prince Edward Island, have passed laws declaring the Dominion Act applicable to such disputes within the jurisdiction of the province as are defined in the Act.

Statutory provision of machinery for the settlement of labour disputes in Canada was first made by the Legislatures of Ontario, Nova Scotia, British Columbia and Quebec. Laws were enacted providing for conciliation and arbitration by one means or another, but few of these provincial laws met with any degree of success, and the Dominion Parliament entered the field by enacting the Conciliation Act in 1900. Subsequently, Acts were passed in Ontario, Manitoba and Quebec. In Quebec the statute enacted in 1921 was a compulsory investigation law applicable to municipal employees within the province. Provincial laws in force at the present time are the Trades Disputes Acts of Ontario and Quebec, the Ontario Municipal and Railway Board Act, the Quebec Municipal Strike and Lockout Act and the Alberta Labour Disputes Act. The Manitoba Industrial Conditions Act is unrepealed, but appears not to be in operation.

In this discussion of Canadian laws on industrial disputes, the provincial statutes are considered in the chronological order of the earliest enactment in each province followed by the Dominion laws. Finally, a section is devoted to the work of commissions which have been appointed at various times under the authority of the Inquiries Act to investigate the causes of particular disputes between employers and employed.

Ontario

The first Canadian legislation dealing with industrial disputes was an enactment of the Ontario Legislature in 1873[1], which was almost identical with a British statute of 1867, providing for local boards of conciliation to be established by agreement between employers and workmen but restricting the scope of the board's jurisdiction to disputes not involving any question of wages. It was still considered an unjustifiable interference with the freedom of contract

[1] Trades Arbitration Act, R.S.O., 1897, c. 159.

as established by the repeal of the Statute of Apprentices in Britain in 1814 to allow any outside agency to deal with wages. "Inasmuch as ninety-five one-hundredths of the disputes which arise between the employer and employee relate to the rate of remuneration, it is difficult to see what object it was hoped to achieve by an arbitration act containing such a section."[2] Like its model, the Canadian Act was a dead letter and remained so even after its amendment in 1890 to permit boards formed by joint agreement to establish rates of wages. In 1911, the law was repealed as obsolete.

In 1894, the Ontario Legislature passed the Trades Disputes Act[3], adapted from a statute enacted in New South Wales in 1892. Provision was made for councils of conciliation of four members, two to be nominated by each party to the dispute after application by one or both parties to the registrar for the appointment of a council. Two councils of arbitration were to be appointed for a term of two years on the nomination of employers and employees, one council to have jurisdiction in railway labour disputes and the other to deal with disputes in other industries. Reference to a council of arbitration was to be made by joint agreement of the two parties or by one party after failure of a conciliation council or refusal of the second party to submit the case to a council of conciliation. An arbitration award was to be binding only by joint consent of the disputants.

In accordance with the Act, the councils of arbitration were duly appointed but no dispute was referred to the council for railway labour disputes and in only one case was application made to the other council for arbitration. A tailors' union in Toronto applied for action by the council in 1896 but the employers refusing their consent to arbitration, the result was an abortive investigation by the council. This failure of the law led to an amendment in 1897 which required the council of arbitration to communicate with the parties involved in a dispute and to endeavour to effect a settlement by mediation. Information regarding a dispute was to be sent by the mayor of the municipality concerned to the registrar. The refusal of one or other side to nominate representatives for the council of arbitration on the expiration of the first term of service led to the further amendment that the Lieutenant-Governor in Council might appoint the council of arbitration directly if nominations were not forthcoming from the employers or employees. These clauses extended the Act beyond the purely permissive character of the original enactment but increased the facilities for conciliatory methods rather than the provision for arbitration. Subsequent to the amendment in 1897, two disputes were settled by the intervention of a member of the council in the capacity of mediator.

A further development in the direction of mediation was made in 1902 by an amendment which empowered the registrar under the Trades Disputes Act (the Secretary of the Bureau of Labour after its formation in 1900) to act as mediator when requested to do so by one party to the difference or by the mayor of the municipality concerned. The reports of the Bureau of Labour for the years 1902-04 enumerate thirty-one disputes in which the registrar intervened but no information is given as to the results of this action. The Act was consolidated in 1910 but no operations under it have been reported since 1904.

In 1906, the Ontario Legislature passed the Ontario Railway and Municipal Board Act,[4] which contained a section enabling the board to investigate and determine matters in dispute between any steam or electric railway company and its employees when requested to do so in an application containing an agreement to accept the award of the board and to continue work during the investigation. It was provided, also, that when a strike occurred or was threatened,

[2] Canada, Report of Royal Commission on Labour and Capital, 1889, p. 95.
[3] R.S.O., 1927, c. 178.
[4] R.S.O., 1927, c. 225.

the board should act as mediator. In the event of failure in this direction and if the general public were likely to suffer injury or inconvenience with respect to food, fuel or light, power or the means of communication or transportation or in any other respect, the board was authorized to proceed of its own motion to investigate the facts bearing on the dispute and to make its finding public. In 1913 the scope of the Act was extended to include public utilities. Until the Industrial Disputes Investigation Act was alleged unconstitutional in the case of the Toronto Electric Commissioners in 1923, employers and workmen engaged in the operation of railways and public utilities in the province of Ontario had recourse either to the Ontario Railway and Municipal Board or to the federal Department of Labour for aid in the settlement of labour disputes, the former providing machinery for voluntary conciliation backed by authority under the Ontario Railway Act[5] to take over the operation of any railway if services were suspended and the latter requiring investigation before a suspension could take place and providing means of investigation and conciliation. The annual reports of the Railway and Municipal Board for the years 1906-23 refer to five strikes in which the board intervened, all of these being disputes between electric railway companies and their employees. In the case of the strike on the Sandwich, Windsor, and Amherstburg Railway in 1919 and the London street railway strike in 1920 and 1921, the board took control and operated the railways for periods of 14 and 358 days respectively. In four of the disputes adjusted by the board, the principal point of conflict was a demand for an increase in wages, and in the fifth case, the complaint concerned working hours. During the period from the enactment of the Industrial Disputes Investigation Act by the federal Parliament in 1907 to March 31, 1923, there were fifty-one applications to the Department of Labour for the appointment of a board of conciliation and investigation in connection with disputes between electric railway companies in Ontario and their employees. Twenty-seven of these disputes were settled by the award of a board and in nine cases the appointment of a board was unnecessary owing to the settlement of the points at issue by further negotiation or by mediation by the department. In eleven disputes matters were adjusted by negotiation after an award had been made but had been found to be unsatisfactory to one or other of the parties, and in four cases a strike occurred after the findings of the board had been published. Between 1923 and 1929, there were two labour disputes reported as settled through the intervention of the Ontario Railway and Municipal Board, one involving the Hamilton Street Railway Company and the other the London Street Railway Company. Both of these cases arose during 1928.

Nova Scotia

To the Nova Scotia Legislature belongs the distinction of having been the first to impose compulsory arbitration, the Miners' Arbitration Act of 1888[6] providing for arbitration of disputes regarding miners' wages on the application of one or both parties, the award to be obligatory. A bill was introduced in 1887 by the Hon. W. S. Fielding, at that time Premier of Nova Scotia, but after passing the Legislative Assembly, it was defeated in the Council. The next year it was brought up again and accepted to the great satisfaction of the miners of the province as expressed at the Grand Council of the Provincial Workmen's Association. The Commissioner of Mines was empowered to decide whether arbitration should be resorted to in case one party laid a complaint and, for this purpose, he was authorized to summon both parties and hear evidence before making a decision. The board of arbitration was to have five

[5] R. S. O., 1927, c. 224, s. 261.
[6] N. S. Stat., 1888, c. 3.

members, two of whom were to be appointed permanently by the Lieutenant-Governor in Council, two elected by the parties to the dispute and the fifth by the elected members jointly. If the disputants refused to nominate a member or members, the two permanent members might act alone. Authority was given to compel the production of documents and compliance with awards was to be enforced by a unique method of requiring the forfeiture of fourteen days' wages of all the employees concerned minus the costs of arbitration to the employer or the forfeiture of an equal sum to the employees, according to the party at fault. The same forfeiture was to be required for any contravention of the prohibition of lockout or strike. In addition, awards might, on the motion of either party, be made an order of the Supreme Court and become enforceable at law.

The statute of 1888 was never put in operation. In 1890, a new law[7] was enacted containing the same provisions with a few changes. The Commissioner of Mines was to be required to hear only one side of a dispute before referring the matter to arbitration. A penalty was to be imposed for refusing to name an agent to act on behalf of either party and the procedure in regard to the money forfeit was altered. Other changes were unimportant.

The reports of the Commissioner of Mines give information regarding but one case dealt with under the Miners' Arbitration Act. It is of special interest as it was connected with a similar dispute involving another company in which the Dominion Conciliation Act was invoked.[8] A demand for an increase in wages was made by all the miners early in 1901. The Dominion Coal Company and the Nova Scotia Steel and Coal Company on opposite sides of Sydney Harbour refused to grant an increase. The employees of the former company applied to the Commissioner of Mines for arbitration under the Act of 1890. The evidence produced led the board of arbitration to refuse the increased rates on the ground that the company was unable to pay them. The employees of the Nova Scotia Steel and Coal Company applied for assistance under the federal statute and the settlement arrived at was that rates should be increased to the same scale as that of the Dominion Coal Company.

In 1903, the Nova Scotia Legislature enacted a law[9] for the settlement of labour disputes in any industry by means of local conciliation boards, the system being based on that provided for in the British Conciliation Act of 1896. No information regarding the operation of the Conciliation Act of Nova Scotia has been published in the reports of the Provincial Secretary.

In 1925, following the announcement of the Privy Council decision regarding the Industrial Disputes Investigation Act, the Industrial Peace Act (c. 1) was passed in Nova Scotia. This statute repealed the Miners' Arbitration Act and the Conciliation Act of 1903. The first part of the Industrial Peace Act was much like the Industrial Disputes Investigation Act. It was applicable to the mining industry and the operation of public utilities, provided for boards of conciliation and investigation, and for publishing the reports of such boards if deemed desirable. Strikes and lockouts prior to or during the reference of disputes to boards were forbidden. A second part of the Act made provision for an arbitration commission to which disputes not settled by conciliation boards might be referred. This part of the statute was to be brought into force on proclamation by the Lieutenant-Governor in Council, but had not been put in operation when, in the following year, the whole statute was repealed by an Act declaring the Dominion Industrial Disputes Investigation Act to apply to disputes in connection with mines and public utilities in Nova Scotia.

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[7] N. S. Rev. Stat., 1923, c. 248.
[8] *Labour Gazette*, Vol. I, p. 507; Vol. II, p. 21.
[9] N. S. Rev. Stat., 1923, c. 247.

British Columbia

At the present time, there is no provincial statute in force in British Columbia designed to settle labour disputes, except the Act of 1925 enabling the application of the Industrial Disputes Investigation Act to the classes of disputes within its scope in British Columbia.

The first attempt to deal with industrial disputes in this province was by an Act passed in 1893 which made provision for a bureau of labour statistics and for conciliation and arbitration in labour disputes. The New South Wales law of 1892 was closely copied, as it was in Ontario the following year, but the permanent councils of arbitration provided for were not established and the Act was replaced in 1894 by the Labour Conciliation and Arbitration Act.[10] The idea of permanent councils was abandoned and provision was made for councils of conciliation to which reference of disputes might be made by joint agreement of the parties. Conciliation councils were to consist of four members representing equally the two sides and, if no agreement was reached, a joint application for reference of the dispute to a council of arbitration might be made. A council of arbitration was to consist of three members, the third member being a judge of the Supreme Court of the province. By previous agreement the award might be made a rule of the Supreme Court on the application of either party. No proceedings were taken under this Act and it was not amended to permit mediation by a government officer as in Ontario. In 1922, it was repealed as obsolete.

Quebec

The history of statutory provision for conciliation or arbitration in industrial disputes in the province of Quebec shows more activity on the part of the provincial government in the settlement of disputes than in any other province. The New South Wales law served as a model for the Quebec Trades Disputes Act of 1901[11] as it had in Ontario and British Columbia. In 1903 an amendment was passed similar to that of 1902 in Ontario, by which the registrar was authorized to endeavour to effect a settlement by mediation in any dispute in which he was requested to do so by the employer or the employees or by the mayor of the town concerned. A further duty was imposed on the registrar in requiring him to proffer his services without waiting for a request in writing to be made to him.

The council of arbitration for railway disputes was never established, no nominations being received for members. The council of arbitration for disputes other than those involving railway labour was organized in March, 1902, but the inaction of the employers prevented any reference of disputes under the Act until after the amendment of 1903, except in one instance, the only one in which the provision for conciliation councils was utilized. The reports on the operation of the Act state that the members of the two permanent councils of arbitration which were appointed in the years 1901 and 1908 were not acceptable to the workpeople, and in 1909 the law was amended to provide that a council of arbitration should be appointed in connection with each dispute to be referred to arbitration. The employer and employees between whom a difference had arisen were thus enabled to make nominations for one representative each on the council.

The registrar of councils of conciliation and arbitration reports a few disputes each year in which he has intervened as a conciliator, his efforts being successful in many cases. In 1907 the two parties to a dispute agreed to refer the matter to arbitration but preferred to do so under the provisions of the new Dominion Act of that year rather than under the provincial law. A strike of

[10] B. C. Rev. Stat., 1911, c. 123.
[11] Que. R. S., 1925, c. 97.

boot and shoe workers in November, 1925, in Quebec City was followed by the appointment of a council of arbitration under the Trades Disputes Act. The award of the council, signed by two members, declared for a reduction in wages, which the employees refused to accept. The strike which followed lasted from early in May until August, but the strikers gradually resumed work or were replaced by new workers.[12] In 1929, an application for a council of arbitration was made by the barbers' union of Montreal but the master barbers refused to nominate a representative.[13] These appear to be the only cases in which a council of arbitration was appointed or requested. In the report of the registrar of conciliation and arbitration councils, 1929-30, he states:—

> "I did not intervene in any industrial dispute this year because there was no serious one and no party to the disputes wished to submit his troubles to the Quebec Industrial Disputes Act, preferring to have them settled by the arbitration and conciliation councils of the unions or syndicates affected."

In 1921, the Quebec Legislature passed the Municipal Strike and Lockout Act.[14] The statute as amended in 1922 relates to disputes between any municipal authority and policemen, firemen, waterworks employees, or men employed in connection with the disposal of garbage, if at least twenty-five persons are employed in any one of these classes. Only disputes regarding wages, hours of labour, or discrimination against members of a trade union are within the scope of the Act. The statute requires the reference of any dispute covered by the Act to a board of arbitration before a strike or lockout may be declared. Any person declaring a lockout or going on strike or inciting to strike or lockout before the dispute is submitted to a board of arbitration is liable to a fine but the award of a board of arbitration is not enforceable. The Act met with the approval of organized labour, the Trades and Labour Congress of Canada and the Federation of Catholic Workers both advocating its extension to all classes of municipal employees. In recent years the latter organization has requested the Quebec Government to amend the Act to make arbitration in disputes involving municipal police and firemen compulsory and the award binding on both parties.

Up to June 30, 1923, this statute had been invoked on four occasions,[15] the employees making application for the appointment of a board of arbitration in each case. Policemen and firemen in the city of Quebec, policemen in Hull, and policemen in Montreal were the employees concerned. In three cases, the award was accepted; in the case of the Hull firemen, the decision was not unanimous. In the Montreal case, the city applied for a writ of injunction to restrain the board of arbitration from dealing with the matter on the ground that the requirements of the law had not been fulfilled in connection with its appointment. By a judgment rendered on April 28, 1922, the injunction was refused with costs against the city and the board proceeded with the hearing, issuing an award accepted by both parties. No disputes dealt with under this Act have been reported by the Minister of Public Works and Labour since 1923.

Manitoba

Before 1919, no legislative action had been taken in Manitoba to provide for the settlement of labour disputes, but the secretary of the Bureau of Labour stated in his report for the year ending November 30, 1919:—

> "Although no power to deal with labour disputes has actually been vested in the bureau, the services of the secretary have frequently been sought in this connection and during the past four years he has participated in negotiations for settlement on many occasions. It is gratifying to note that in the majority of cases amicable settlements have been arrived at."

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[12] *Labour Gazette*, 1926.
[13] Quebec, Annual Report of Minister of Public Works and Labour, 1928-29, p. 84.
[14] Quebec, R.S., 1925, c. 98.
[15] Quebec, Annual Reports of Minister of Public Works and Labour, 1921-23.

In March, 1919, the Industrial Conditions Act[16] was passed, providing for a Joint Council of Industry composed of five persons to hold office during the pleasure of the Lieutenant-Governor in Council. Employers' and employees' organizations were given the right to nominate two members each and the fifth member was to be an "impartial" person. In addition to powers given the council in regard to holding inquiries into the cost of living, wages, employment and unemployment, general working and housing conditions, unreasonable profits and other matters of industrial interest, the council was authorized to act as a board of arbitration at the request of the parties to a dispute and was given power to enforce the attendance of witnesses and the production of documents, etc. There being no compulsory reference of disputes to the council and no enforcement of awards, the law otherwise was purely permissive.

To the original statute was attached a schedule setting out four rules of law to be applicable to labour disputes on public notice to that effect being given by the Joint Council of Industry. These four declarations were taken from the British Trade Disputes Act, 1906, and were designed to free organizations of employers or employees from liability as conspiracies in case of labour disputes and from liability for interfering with another person's business, to prohibit actions for tort and to permit peaceful picketing. On May 1, 1919, a strike of metal workers was called in Winnipeg following the failure of the parties to agree on the matter of wages and a 44-hour week and the refusal of the large employers to recognize the metal workers' union. The building trades struck for higher wages at the same time and on May 15 occurred a general sympathetic strike of street railwaymen, grain elevator men, and postal employees, department store employees and some classes of railway and municipal employees. These strikes were called off at the end of June but the embittered relations consequent on the strike rendered the operation of the Industrial Conditions Act difficult. There was delay in forming the Joint Council of Industry provided for, the reason ascribed being the refusal of labour to nominate its representatives. At the 1920 session of the Legislature, the statute was amended. The schedule was struck out with the provision for its being put in force at some future time. In its place were enacted three clauses declaring the right of employers and employees to organize for any lawful purpose and the right to bargain individually or collectively, provided that a dispute as to the method or terms of such bargaining should be submitted to the Joint Council of Industry. The council was to investigate such a dispute and to report on it with all dispatch. Following this amendment, the council was organized and the first meeting held on May 12, 1920.

The report of the council for the period ending November 30, 1922, shows that ninety industrial disputes were dealt with, of which forty-five were settled on the basis of the council's decision, twenty-seven were settled by negotiation and fourteen were settled in conference with the chairman. In two cases, the findings of the council were rejected and two cases were still pending at the time the report was issued. In eleven cases, the two parties requested the council to arbitrate between them, agreeing to abide by the decision given. There was some criticism of the Act and its operation, notably during the session of the legislature of 1922, and the appropriation for the following year was so reduced as to make the Act inoperative.

In 1926, a provincial statute declared the Dominion Industrial Disputes Investigation Act in force in Manitoba.

In 1929, organized labour in Manitoba urged the enactment of a law similar to the Alberta Labour Disputes Act of 1926 which was modelled on the Dominion Industrial Disputes Investigation Act but which did not prohibit strikes or

[16] Consolidated Amendments, 1924, c. 92.

lockouts and applied to all industries. The Industrial Relations Committee of the Canadian Manufacturers' Association reported to the annual convention of the association in 1929:—

> "Your Committee is still of the opinion that this type of legislation should not be made applicable to general industry and steps are being taken to give our Manitoba members all possible assistance in opposing the bill. Apart from the argument already mentioned that no need for compulsory arbitration machinery exists in the case of general industry, experience has shown, in the opinion of your Committee, that where such machinery is in existence, there is a tendency for repeated recourse to be had to it, with the result that an employer may find himself frequently called upon to take part in possibly long-drawn-out arbitration proceedings, without any guarantee that the settlement will have any permanence—all of which must tend to embitter rather than improve the relations between employer and employes. All things considered, therefore, and chiefly for the simple reason that no need for any such innovation has been shown, your Committee has taken the view that this legislation should be opposed in Manitoba as it was four years ago in Alberta."

Alberta

It has already been noted that the Industrial Disputes Investigation Act enacted in 1907 by the Dominion Parliament was declared *ultra vires* by the Judicial Committee of the Privy Council in 1925. When the statute was amended in the same year to bring it into line with the decision as to the legislative powers of Parliament, it was provided that the Act might be put in force in any province on an enactment of the legislature of the province to that effect. Such statutes were accordingly passed in British Columbia, Nova Scotia, New Brunswick, Manitoba and Saskatchewan in 1925 and 1926. In Alberta, there was opposition on the part of the miners to the operation of the Dominion Act and pressure was brought to bear on the Provincial Government to enact a law for the settlement of industrial disputes to be administered by the provincial authorities.

At the legislative session of 1926, the Alberta Labour Disputes Act[17] was passed. Disputes in all industries were declared under the Act. A board of conciliation and investigation of three members was to be set up by the Alberta Minister of Public Works on the application of either party to a dispute or at the request of a municipality or at the will of the Minister of Public Works. The Act did not prohibit strikes or lockouts, but in other respects was similar to the Dominion statute.

Four applications for boards were received from miners during 1926 but only one board was established. In one case, the differences were settled without a board; in another, the employees were deemed not to be employees within the meaning of the statute; in a third case, involving recognition of the Mine Workers' Union of Canada, four different employers were affected. There was such difficulty in getting them to agree on a representative that the miners gradually resumed work on the old terms and the application was allowed to lapse. In the fourth case, a board was appointed to consider the claim for increased wages to machine pick miners working in abnormal places. A report signed by the chairman and the representative of the employer opposed this increase. In 1927, no applications were received for boards of conciliation. The report on the operation of the Act shows that there were only five disputes of a minor nature during the year.

At the annual convention of the Alberta Federation of Labour in January, 1928, a resolution was adopted urging the provincial Legislature to pass an Act making the Dominion Industrial Disputes Investigation Act applicable in Alberta to disputes within its scope which were otherwise subject to the exclusive legislative jurisdiction of the province. At the legislative session held in February and March, 1928, this was done and the Dominion Act came into force in Alberta

[17] Stat. 1926, c. 53.

on April 2, 1928. The Alberta Labour Disputes Act was amended at the same time to confine its operation to disputes not coming within the provisions of the Dominion Act. Since the latter statute became operative in Alberta in 1928, four boards of conciliation and investigation have been established under its provisions to deal with disputes in the mining industry in Alberta, three in 1928 and one in 1930. In 1928, boards were established with the consent of both parties, to settle differences between the building contractors in Calgary and the master printers in Calgary and their respective employees.

During 1928, five applications for boards of conciliation and investigation under the provincial Act were received and five were appointed. Three of the disputes involved mechanics employed in garages in Edmonton, Calgary and Lethbridge who had been recently organized in locals of the International Association of Machinists. In each case, increased wages, payment for overtime and better working conditions were demanded by the employees. In none of these disputes were the automobile dealers concerned willing to enter into agreements with the union. In Calgary the board's recommendations for increased wages and overtime rates were accepted by both parties. In Lethbridge the higher wage-rates recommended were put into effect in some garages but there was no general acceptance. In Edmonton, the chief point in dispute seemed to be collective bargaining and the board's recommendation for joint discussion was not acted on.

In 1929, there was another dispute between the Calgary automobile dealers and their employees, the principal point of difference being the refusal of the employers to deal with the union. In this case, the dealers' association declined to appoint a representative on the board and one was named by the Minister. A report signed by the chairman of the board and by the employees' representative recommending recognition of the union was not carried out. The only other board appointed in 1929 was one for the settlement of differences between theatre employees and the management of two theatres in Edmonton. The board's findings were made the basis of an agreement between the two parties.[18]

DOMINION LEGISLATION

In 1882, two commissioners were appointed by the Minister of Finance to inquire into conditions in the factories and mills of the Dominion. This appears to have been the first official investigation[19] into labour matters in the Dominion and was designed to determine the need for factory legislation. The report of the commissioners was mainly concerned with the working conditions of the women and children employed in the factories of Nova Scotia, New Brunswick, Quebec and Ontario and with the provisions for the health and safety of the employees in general. Factory labour was practically unorganized at that time and attention was drawn to the matter through the humanitarian interest of public men and not through disputes within the different industries.

During the eighties, trade unions were rapidly organized and wages and hours frequently in dispute between the employers and unions. Factories had increased in size and number and conditions of employment called for regulation. Factory laws had been enacted in Ontario and Quebec in 1884 and 1885 respectively but the legislative jurisdiction in such matters was disputed and the statutes were not enforced. In 1886, the Dominion Government appointed a Royal Commission on the relations of labour and capital in Canada and specific direction was given the commission to inquire into and report on "the practical operations of courts of arbitration and conciliation in the settlement of disputes between employers and employed and on the best mode of settling

[18] Annual Reports of Commissioner of Labour of Alberta, 1926-30, and *Labour Gazette*, September, 1928, and March, 1930.

[19] Sess. Paper No. 42, 1882.

such disputes." [20] The report of the commission, submitted in 1889, recommended the establishment of permanent local boards of conciliation combined with a central board whose members might be officers of the Bureau of Labour proposed by the commission, the idea of the central board being taken from the system of state arbitration in existence in the states of Massachusetts and New York. The principles underlying the proposed law were conciliation by voluntary boards if so desired, mediation by a member of the central board, or arbitration by either a local or central board, an appeal to lie to the central board if the decision of the local body were unsatisfactory. Decisions of the central board were to be "final and conclusive and to have the same effect as a decision given by any court of record." [21]

In the meantime, industrial depression had set in and labour organizations were less active than in the preceding decade. In 1895, Mr. A. W. Wright of Niagara Falls, was commissioned, on the petition of garment workers in Toronto, presented through the Trades and Labour Congress, to inquire into the "sweating system" in Canada. While the inquiry was being made, some employees in the custom clothing trade in Toronto were locked out. The commissioner, referring to the lockout in his report, declared himself in favour of a Dominion board of mediation and conciliation:—

> "I am strongly of opinion that a Dominion board of mediation and arbitration could be made the means of averting or satisfactorily settling a very large proportion of the labour difficulties and industrial misunderstandings which now eventuate in strikes and lockouts involving great and never wholly repaired losses to both capital and labour. Such a board could act both initially at the request of either party or of both parties to a dispute, or as a court of appeal from the findings of local voluntary boards of conciliation and arbitration, which might be organized somewhat after the manner of the French Conseils de Prud'hommes, as such voluntary boards are organized in some of the states of the neighbouring republic, or as provided in "The Trades Disputes Act of 1894" of Ontario. It would not, in my opinion, be either practical or desirable to give such a board power to enforce its decisions, except, perhaps, in the case of transportation companies, telegraph, electric or gas companies enjoying public franchises, but the mere intervention of such a board and its conciliatory hearing of both parties to the dispute would, I believe, in the majority of cases, result in either preventing a strike or lockout or in settling the difficulty." [22]

The commissioner's comment on the distinction that might be made between industrial disputes involving public utilities and disputes not of such immediate importance to the public is noteworthy in view of later developments in legislation in this field in Canada.

In 1897, the Postmaster General, Hon. Wm. Mulock, directed Mr. W. L. Mackenzie King to look into the methods adopted by contractors for uniforms for government officials, post office employees, the militia, mounted police, etc. Charges had been made that the "sweating system" was used by contractors and sub-contractors for government clothing. No difference between employers and employed entered into this inquiry but the report, published in 1900, showed such evils of low wages, long hours and unsanitary conditions arising from the system of sub-contracting that weight was added to the pressure for a department of the government to be set up to deal with matters affecting the welfare of the workers but, primarily, to develop means for the prevention and settlement of strikes and lockouts.[23]

Commission on Mining Conditions in British Columbia, 1899-1900

The need for some government machinery for conciliation in industrial disputes was impressed on the public mind in 1899 by a serious strike of miners in British Columbia. An amendment of that year to the Metalliferous Mines Act limited hours of underground workers to eight a day. To offset the decrease in

[20] Royal Commission on Labour and Capital, Report, 1889, p. 3.
[21] Ibid. p. 97.
[22] Report upon the Sweating System in Canada, 1896, p. 18.
[23] Report on Methods in Carrying out Government Clothing Contracts in Canada, 1900.

production thought likely to follow the introduction of the eight-hour day, the employers gave notice of a reduction in wages and a strike followed. The unrest among the miners was added to by allegations that American labour was being imported under contract to replace the strikers. The bringing in of miners in this way would be contrary to the Alien Labour Act, 1897, and the matter was brought before the Minister of Justice. In November, 1899, Mr. R. C. Clute, Q.C., of Toronto, was commissioned under the Inquiries Act to make an investigation into mining conditions in British Columbia with a view to determining the causes of the trouble and the needs of the mining industry.

The main report of the commissioner was presented in March, 1900. No breach of the alien labour law was found. The report dealt exhaustively with mining conditions in British Columbia, including rates of wages and methods of payment, trade unionism and collective bargaining. From a section devoted to "Conciliation" the following has been extracted:—

> "The first step is for the parties to meet face to face and discuss the questions in dispute in an amicable way. To bring together and keep the parties in friendly intercourse for a sufficient time that each may fully understand the views and claims of the other, is to eliminate many of the differences that at first stand in the way, and to reduce the matters in dispute to a minimum.
>
> While I doubt the efficacy of enforced arbitration, I am of opinion that much can be done to promote agreement by a "conciliator", who with patience and tact might greatly promote the conditions favourable to a settlement, by bringing the parties together, allaying distrust, presenting the views of each in the least offensive form, eliminating minor causes of friction, promoting good feeling, moderating demands, restoring confidence; all of which are essential to a permanent and lasting settlement. All this he may help to do, not alone at public sittings, but by coming into personal contact in private conversation with the representative of both parties, learning their views, and thus having thoroughly mastered the situation, being able to present them to the other side in the least offensive form."[24]

A recommendation regarding conciliation methods was made by the commissioner, based on his experience in this dispute:—

> "I beg to recommend that in any Conciliation Act which may be introduced, in addition to Conciliation Boards provision may be made for the appointment of a "Conciliator" with power to take evidence under oath . . . . . whose first duty it shall be to endeavour to bring the parties together and ascertain the facts, and the extent of the differences between them, but in other respects left free to act as occasion may demand.
>
> "That the Conciliator have power to act where he deems it advisable, on becoming aware of the dispute and without formal request by either party, in order to avoid that delay which widens the breach and renders all attempts at "conciliation" difficult, if not abortive. The Conciliator should be untrammelled by instructions or restrictions, with power however, to invite assistance from the representatives of the opposing parties, and with authority to act as arbitrator or umpire where requested."[25]

Conciliation Act, 1900

In July, 1900, the Conciliation Act[26] was passed providing for a Department of Labour for the collection and publication of labour statistics and conferring on that department the same functions in regard to conciliation and arbitration that had been assigned in Britain to the Board of Trade by the Conciliation Act of 1896.[27] The law made provision for the registration of boards of conciliation set up by employers and workmen within their own industries but no use was made of this section. The Minister of Labour was empowered to inquire into the cause of any industrial dispute, to arrange a conference between the parties to the dispute, to appoint a conciliator or board of conciliation at the request of either employer or workmen or to appoint an arbitrator on the application of both parties to the difference. In the event of

[24] Type-written report, p. 391.
[25] Ibid. p. 399.
[26] Can. Stat., 1900, c. 24.
[27] Gt. Br. Stat., 1896, c. 30.

special difficulty in determining the causes of the dispute and at the request of a conciliator or a conciliation board and if the parties to the dispute consented, the Minister might recommend to the Governor in Council the appointment of a commission under the Inquiries Act to conduct an investigation under oath.

The Act was, therefore, one of voluntary conciliation, no coercive element entering into it. Like its British model, however, it has been of great service in effecting settlements of disputes before a stoppage of work occurs and in composing differences which have resulted in a strike or lockout, but the great bulk of the work accomplished under the Act is unknown to the general public. Lord Askwith, who was connected with the operation of the British statute almost from the date of its enactment till 1919, writing in 1921, made this statement:—

> "The Act did little more than declare that the Board of Trade could make inquiry or send an appointed officer to see the parties, with the slight protection that officer might have by being able to say that he was acting under a statute, if the right to inquire was challenged . . . . . It may be that its practical use will continue when more novel enactments have been scrapped, but it will, at least, always be remarkable as the very slight legislative base upon which all the conciliation and arbitration work done by the Government, with the wide extension in imitation of it carried out by associations of employers and trade unions, was administered from the year 1896 until the passing of the Munitions of War Acts in 1915."[28]

A similar statement might be made with regard to the Canadian Conciliation Act, with some modification to include the four cases in which the Railway Labour Disputes Act, 1903, was utilized, and the operation of the Industrial Disputes Investigation Act, 1907, which will be discussed later.

The reports of the Department of Labour for the years 1901 to 1908 refer to forty-two disputes in which the intervention of the department was sought. After the passing of the Industrial Disputes Investigation Act in 1907, most disputes of importance were dealt with under that statute until war conditions led to many serious cases. Between 1916 and 1922, "the more important disputes in which mediation work" was done by the department under the authority of the Conciliation Act numbered 506. Conciliation officers were stationed at Montreal, Ottawa, Toronto, Calgary, and Vancouver. In addition, other officers of the department were called on frequently to act the part of peacemaker. Since that time the conciliation work of the Department has continued with increasing activity.

> "There is no aspect of affairs in which the adage, a stitch in time saves nine, applies more forcibly than in the case of industrial disputes. In the great majority of disputes which have become known to the department in their earlier stages it is found possible to secure an adjustment without a strike. There is a growing tendency on the part of employers, as well as of workmen, to invite the service of a departmental officer before a break in working relations. Experience is of the highest value in conciliation work and many a dispute which has perplexed and baffled employers and work-people alike is solved by the appearance at an opportune moment of an officer who has frequently encountered previously the same or a similar situation and whom both sides, though not always without hesitation on the part of one party or the other, accept as mediator."[29]

The services of the Department of Labour appear to have been entirely mediatory, no conciliation boards or arbitrators having been appointed under the Conciliation Act. In this connection, a second quotation from Lord Askwith is pertinent:—

> "In fact, intervention or settlement of labour disputes requires selection of an exact moment for action, complete and speedy grasp of the real causes of the dispute and the technicalities of the points at issue, speed and experience in judging the characters, sayings and real views of the individuals on either side, both in and out of the conference room. Committees are singularly inept bodies for these purposes. They may be suitable as arbitration courts but very seldom as conciliation courts."[30]

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[28] Askwith, Industrial Problems and Disputes, London, 1921, pp. 77-78.
[29] Report of the Deputy Minister of Labour, 1918-19, p. 8.
[30] Askwith, p. 82.

Railway Labour Disputes Act, 1903

In 1902, a bill[31] was introduced in Parliament by the Minister of Labour to provide for compulsory reference of railway labour disputes to a permanent provincial or Dominion board of conciliation and arbitration for award, adherence to which was to be compulsory on penalty of a fine. A breach of the prohibition of strike or lockout was to be punished by a fine based on the amount of wages payable during the period concerned. Disputes on interprovincial railways were to go before the Dominion board. This proposed legislation seems to have been based partly on the New Zealand law and partly on the Miners' Arbitration Act of Nova Scotia. It was very different from the Conciliation Act of 1900 in its coercive features and in its application to one class of labour only. Realizing the importance of a cordial attitude on the part of the employers and the employees to any law for the settlement of industrial disputes, the Minister of Labour stated in Parliament that the bill had been brought forward as a basis for discussion and would not be pressed at that session. A strike of the trackmen of the Canadian Pacific Railway which lasted about two and a half months in 1901 had shown the desirability of greater statutory authority in the matter of disputes affecting such an important utility as transportation.

Prior to the introduction of this bill, one of the planks in the platform of principles laid down by the Trades and Labour Congress of Canada had been "compulsory arbitration of labour disputes." At the congress held in September, 1902, a resolution changing this plank to "voluntary arbitration of labour disputes" was adopted as was also a resolution protesting against the proposed bill, the railroad brotherhoods having shown themselves strongly opposed to the measure. The same congress approved the reintroduction of a bill of the previous session to amend the Conciliation Act to give the Minister of Labour power to appoint a conciliator or board of conciliation of his own motion and, further, to appoint a board of arbitrators on the application of one party rather than both parties as required by the Act. The railroad brotherhoods who protested so strongly against the adoption of compulsory arbitration had organized a conciliation board for the settlement of the trackmen's strike in 1901 and had succeeded in effecting an agreement.

In 1903, a bill[32] from which most of the compulsory elements had been removed, was enacted, making provision for the prevention and settlement of disputes between railway companies and their employees by authorizing the Minister of Labour to appoint a committee of conciliation, mediation and investigation on the application of either party or at the request of a municipality concerned or at his own will. For the appointment of a committee of conciliation, nominations were to be made by the parties, but if one party refused to name a member, the Minister of Labour was given power to make the appointment without nomination. Provision was thus made against one party being able to prevent an investigation being held. Failing agreement by a conciliation committee the minister might refer the matter to an arbitration board with power to compel the attendance of witnesses, the production of documents and the taking of evidence on oath. The report of the arbitration board was to be published in *The Labour Gazette* and the weight of public opinion was counted on to bring sufficient pressure to bear on the parties to cause them to reconcile their differences in accordance with the board's findings.

The Annual Report of the Deputy Minister of Labour for the fiscal year 1902-03 refers to the Act as

> "carrying as far as possible the principle of voluntary conciliation but substituting for a compulsory arbitration, with its coercive penalties, the principle of compulsory inves-

[31] *Labour Gazette*, vol. II, p. 769.
[32] 1903, c. 55.

tigation and its recognition of the influence of an informed public opinion upon matters of vital concern to the public itself."[33]

The Railway Labour Disputes Act was expressly declared to apply to any railway whether under the jurisdiction of the Parliament of Canada or of the legislature of any province and whether owned or operated by a company or by the Government of Canada or of any province. At that time, the Intercolonial Railway and the Prince Edward Island Railway were owned by the Dominion Government. It was, therefore, provided that in disputes involving the employees of these railways, the power to appoint conciliators or arbitrators should be exercised by the Lieutenant-Governor in Council of one of the provinces through which these railways passed; that is, Prince Edward Island, Nova Scotia, New Brunswick, and Quebec, the Lieutenant-Governor in each case to be named by the Minister of Labour. No use appears to have been made of this section.

The provision for committees of conciliation, mediation and investigation by the Railway Labour Disputes Act has been utilized on only four occasions and in all but one case reference had to be made later to arbitration—in 1904 in a dispute between the Grand Trunk Railway Company and its telegraphers;[34] in 1907, and in 1908, in disputes involving freight-handlers and freight clerks respectively on the Intercolonial Railway,[35] and in 1921 in a dispute between members of the Canadian Brotherhood of Railroad Employees and the Intercolonial and Prince Edward Island, National Transcontinental, Grand Trunk Pacific and Canadian Northern Railways, operated as the Canadian National Railways.[36] The last three of these cases were dealt with, strictly speaking, under the railway labour disputes sections of the Conciliation and Labour Act, 1906,[37] which was a consolidation of the Conciliation Act, 1900, and the Railway Labour Disputes Act, 1903.

The three cases in which the Railway Labour Disputes Act was resorted to after the enactment of the Industrial Disputes Investigation Act in 1907 involved railways owned in whole or in part by the Government of Canada. The earlier Act is declared to apply to such railways. The Industrial Disputes Investigation Act makes no such provision and the Government of Canada is, therefore, not bound by its provisions. In 1922, differences arose between the Canadian National Railways and clerks, freight handlers, etc., members of the Canadian Brotherhood of Railroad Employees. These were the same classes of employees who had been represented on the committee of conciliation, mediation and investigation and the board of arbitration under the Railway Labour Disputes Act in 1921. In this case, the employer raised no objection to the establishment of a board under the Industrial Disputes Investigation Act and the dispute was accordingly dealt with under that Act. Since 1921, no disputes have been referred for settlement under the provisions of the Railway Labour Disputes Act.

Industrial Disputes Investigation Act

Of all the Canadian enactments regarding conciliation and arbitration in labour disputes, the Industrial Disputes Investigation Act[38] has aroused by far the most comment in Canada and has been the subject of frequent inquiry from other countries. The principles of compulsory investigation and of reliance on public opinion as a court of final appeal, which formed the basis of the Railway Labour Disputes Act, were applied in the later law with an additional coer-

[33] P. 59.
[34] Ibid. Vol. 5, pp. 168, 266, 869, 974 and Annual Report of Department of Labour, 1904-05, p. 63.
[35] Ibid. Vol. 8, p. 289 and Vol. 9, p. 500.
[36] Ibid. Vol. 21, pp. 1096, 1351, 1466. Annual Report of Department of Labour, 1921-22, p. 31.
[37] R. S. 1906, c. 96, now R. S. 1927, c. 110.
[38] R.S. 1927, c. 112.

cive element in the prohibition of strike or lockout until after investigation and a further distinction between industries of immediate public interest and those not of such vital concern.

The Industrial Disputes Investigation Act was passed by Parliament in 1907[39] after a strike among the coal miners in Alberta in the previous year, causing a serious shortage of fuel in the prairie provinces, had emphasized the particular hardship imposed by stoppages in certain industries. The statute is limited in its main provisions to disputes involving employers of ten or more persons engaged in the operation of mines, agencies of transportation and communication and public service utilities including steam, electric and other railways, steamships, telegraph and telephone lines, gas, electric light, water and power works. It is declared unlawful for an employer in these industries to lock out his employees or for workmen to strike prior to or during a reference of the dispute to a board of conciliation and investigation. An employer contravening the law is liable to a fine of from one hundred to one thousand dollars for each day or part of a day that a lockout exists and an employee on strike contrary to the Act is liable to a fine of from ten to fifty dollars for each day or part of a day he is on strike. A penalty of from fifty to one thousand dollars is provided, also, for anyone who incites or aids any person to declare a lockout or to strike contrary to the law.

The statute is administered by the Minister of Labour and the Deputy Minister of Labour acts as registrar of boards of conciliation and investigation. A board is appointed by the Minister, the three members being nominated, one by each of the two parties to the dispute and the third by agreement between the other two or, failing agreement, by the Minister. Should either party refuse to nominate a representative, the Minister may nominate one on its behalf. The original enactment provided that the machinery of the Act could be put in operation only on the application of one or other of the parties. An amendment of 1918 empowered the Minister of Labour to appoint a board at the request of any municipality interested or of his own motion if a strike had occurred. In 1920, a further amendment enabled the Minister to exercise this authority if a strike seemed to him to be imminent. These amendments marked an extension of the basic principles of the Act that there are interested in any dispute in certain industries not two parties only, but a third party, the general public, which claims the right to intervene through the Government. If the disputants do not come to an agreement through a board of conciliation, the latter is empowered to make recommendations looking to a settlement and the report, or reports, of the board are published in *The Labour Gazette* and may be given what other publicity the Minister deems desirable. The Act provides that if the parties agree in writing to be bound by the recommendation of a board it may be made a rule of court of record and enforceable at law. Employers and employees are required to give thirty days' notice of an intended change as to wages or hours and, if such intended change results in a dispute, neither party may alter the conditions of employment with respect to wages or hours until the dispute has been dealt with by a board and the report of the board has been delivered to the parties affected.

Amendments were made to the Act in 1910, 1918, and 1920. Except the amendments already noted, all the changes made in these years were merely with a view to simplifying the procedure or to make clearer the original intent of the statute. In 1923, a Bill to amend the Act was introduced in Parliament by the Minister of Labour. The most important amendment proposed related to section 57 of the Act requiring employers and employees to give at least thirty days' notice of a change in wages or hours and prohibiting any change in these conditions until the dispute had been reported on by a board. The 1923

[39] C. 20; amended 1910, c. 29; 1918, c. 27; 1920, c. 29; 1925, c. 14.

Bill proposed a clearer declaration of the illegality of any change in wages or hours of labour prior to or pending an inquiry by a board if the proposal to change conditions brought about a dispute. The amendment was designed, further, to place definitely on the party giving notice of the intended or desired change the onus of applying for a board of conciliation and investigation. Another section of the amending Bill declared expressly that an employer making any change in working conditions contrary to the Act was liable to the same penalty as an employer causing a lockout contrary to the Act. These amendments were passed by the House of Commons but were defeated in the Senate. In the report of the Legislation Committee of the Canadian Manufacturers' Association at the anual meeting of the association in July, 1923, it is stated: "As this amendment was viewed with disfavour by those members interested in mining, steps were taken to oppose it in the Senate."[40] An amendment passed by the Upper Chamber at the same time was to the effect that the third member of a board of conciliation and investigation, if the other two members failed to agree in nominating one, should be named by the Chief Justice of the Supreme Court of Canada. Under the Act, the right of nomination in such event belongs to the Minister of Labour, and the argument was advanced that there was an objection on the part of some employers that the Minister of Labour as a former labour man himself would tend to appoint a person more closely associated with only one side of the dispute, a view which an examination of the facts does not appear in any way to sustain. No agreement on the amendments was reached by the two Houses. In the following year the Bill was introduced again with the same result.

In the meantime the constitutional validity of the Industrial Disputes Investigation Act had been challenged by the Toronto Electric Commissioners in connection with the appointment of a board of conciliation and investigation to deal with a dispute between the Commissioners and their employees engaged in the work of power transmission and distribution in Toronto. The Commissioners refusing to nominate a representative on the board, one was named and appointed by the Minister of Labour. The Commissioners thereupon applied for an order restraining the board from proceeding with an inquiry into the dispute on the ground that it was not within the jurisdiction of Parliament to enact laws concerning municipal employees or affecting civil rights. The decision of the Judicial Committee of the Privy Council, to which the case was appealed declared against the validity of the statute as one dealing with property and civil rights, matters reserved to the provincial legislatures under the British North America Act. Following this decision the Industrial Disputes Investigation Act was amended in 1925 to confine its application to disputes clearly within the legislative competence of Parliament. At the same time, the amendments passed by the Commons but defeated by the Senate in 1923 and 1924 were agreed to by both Houses of Parliament.

Provision was made in the original Act for the voluntary application of its machinery to disputes otherwise without its scope. In addition to the application of the Act to industries of vital interest to the community the Minister of Labour was empowered to appoint a board of conciliation and investigation to deal with disputes in industries other than mining and the public utilities specified in the statute but only if both parties to such a dispute consented to such procedure. The reports of the Department of Labour up to 1923 show an increasingly large number of disputes in which boards were appointed with the consent of both parties, a fact which would seem to demonstrate the beneficient character of the Act and the friendly attitude adopted towards it by employers and employed, since in these industries application for a board is purely voluntary and there is no restriction on the right to strike or lockout. In the first twelve years

[40] Industrial Canada, July, 1923, pp. 127-128.

during which the law was in force, only twenty-three disputes dealt with under the Act were in industries other than mines or public utilities, or six per cent of all the disputes referred under the Act during this period. In the four years, 1920-23, forty-two disputes in other industries, or about nineteen per cent, were dealt with by joint consent. In these four years, twenty-one disputes involving workmen under municipal or provincial control were also referred to boards of conciliation with the consent of the employing body and the workmen, making a total of sixty-three disputes, or twenty-eight per cent, in which the parties agreed to the appointment of a board of conciliation and investigation. Of the eighty-six disputes referred to boards by agreement before 1924, in only two cases was a strike not averted or ended.

During the fiscal years, 1923-25, when the validity of the Industrial Disputes Investigation Act was being argued in the courts, there were very few boards established and only one was set up under the section stipulating the consent of both parties. Following the amendment of the Act in 1925 bringing it into conformity with the judicial decision as to the legislative jurisdiction of Parliament, and the enabling Acts of the Legislatures of British Columbia, Manitoba, Saskatchewan, New Brunswick and Nova Scotia during the years 1925-26, and of Alberta in 1928, restoring the Act to its former status in these provinces, disputes were again submitted by joint consent of both parties. In 1927-28, two such boards were appointed; in 1928-29, five boards, and in 1929-30, one board. In fourteen cases, the employer concerned refused to consent to the appointment of a board of conciliation and investigation. The total number of boards in all industries during the years 1927-30 was 38. In comparing the number of disputes in which the machinery of the Industrial Disputes Investigation Act was utilized in the two periods before and after the interval when the validity of the statute was being tested in the courts, it must be borne in mind that the number of strikes occurring in all industries in Canada in the six years from 1924 to 1930 was less than half the number which had occurred in the preceding six years. The later period was, relatively, one of industrial peace.

The period, 1907-1930, during which the Industrial Disputes Investigation Act has been in operation, has been one of severe testing for any law of this sort. The steadily increasing cost of living, by no means a war phenomenon though the movement was greatly accelerated by war conditions, the flood of immigrants in the years prior to the war and the absorption of large numbers of them in mining communities and the lower ranks of railway and shipping labour, the fact that Canadian industries were comparatively young and the organized labour movement only beginning to gain a foothold among many classes of workers, the unsettling effects of the war both on industry and on the minds of the workers, all these conditions were important factors affecting the operation of such a statute. Criticism directed at the law has been aimed almost entirely at the fact that strikes have occurred in industries within its scope and that the penal clauses of the Act have not been enforced. The statute requires the clerk of a court in which any prosecution for violation of the Act takes place to report the case to the registrar of boards of conciliation and investigation. Some eighteen complaints of violation of the law were reported to the registrar to have come before the courts; eleven prosecutions for illegal strikes or for inciting or aiding a strike, in seven of which the charge was sustained by the court; four for illegal lockouts, two employers being fined; two for the enforcement of an agreement based on an award of a board of conciliation and investigation, both of which were dismissed, and one application for an injunction to restrain the employer from reducing wages before the matter had been dealt with by a conciliation board, which was suspended on appeal on the ground that, as the agreement had expired, there were no existing rates of wages regard-

ing which there could be a dispute. The Governments which have been in power during this period have followed the practice of leaving the enforcement of the penal provisions of the law to the aggrieved parties in the dispute and neither employers nor workmen have cared to assume the responsibility for court proceedings in more than these few cases. In no case has an effort been made to prosecute a large body of men for striking. Dr. Victor S. Clark, commissioned in 1908 and 1910 by the United States Government to investigate the operation of the Canadian law, stated in 1916:—

> "But even though violations are seldom prosecuted, neither strikers nor employers dare defy the law of the land in disputes prominently before the public and affecting the prosperity and comfort of a large body of citizens. By doing so, they would put a powerful weapon in the hands of their opponents and they would fatally prejudice their case in the high court of public opinion."[41]

The framers of the statute appear to have been fully seized of the difficulties of the problem when it was defined as "An Act to *aid* in the prevention and settlement of strikes and lockouts in mines and industries connected with public utilities." It might be concluded from the somewhat modest claim as to the expected success of the proposed law that its sponsors realized the practical impossibility of forcing any considerable body of men in a democratic community into any line of action repugnant to them. In Australia, one method of enforcing compliance with the arbitration laws is to deprive the trade union contravening the law of the privileges of registration and thus of the legal status conferred on it. It has been suggested that a similar practice might be followed in Canada. The number of strikes occurring in these countries in spite of such provisions shows that the imposition of this penalty is not an effective deterrent. An analysis of the strikes contrary to the provision of the Canadian Act exposes the futility of such a proposal for a large percentage of the important strikes in industries under the Act were strikes to enforce recognition of the union by the employer and such a penalty as that imposed in Australia is only possible where the union concerned is a recognized body entitled to certain privileges which can be denied for fault. In the higher grades of railway labour, there has been general compliance with the law but the railroad brotherhoods are trade unions with a long history of orderly collective bargaining and their members are well-known citizens in each community. A strike on the railroads is immediately felt by the general public and by the very persons among whom the strikers reside. Thus, workers on the railroads, both steam and electric, are not only more exposed to the force of public opinion expressed in their own community and through the press, but the merits or demerits of their cause are better known and more likely to be adjudged fairly. Very different is the case of the coal miners, particularly those in western Canada, among whom has occurred the largest number of strikes contrary to the Act. Scattered in isolated communities made up of a large proportion of foreign-born or of non-Anglo-Saxon descent, the coal miners present a decided contrast to the city-dwelling workers in industries of public utility. Midway between these groups are the freight-handlers and longshoremen among whom the next largest number of such strikes has occurred. The early years during which the statute was in operation was the period during which the coal miners strove to obtain recognition of their union and to extend its jurisdiction. They met with a great measure of success in Alberta and southeastern British Columbia but with defeat on Vancouver island. The prolonged strikes in the Nova Scotia fields during 1909-1911 were concerned also with union recognition. A dispute arising from the refusal of an employer to deal with the trade union of which his employees are members and so to bargain with the wage earners collectively is likely to be most bitterly contested. As in other spheres of life,

[41] Clark, The Canadian Industrial Disputes Act, Proceedings of American Academy of Political and Social Science, New York. Vol. 7, No. 1, pp. 15-16.

a general principle may be more tenaciously adhered to than claims involving other matters regarded as not so vital. Adjustments of wages and hours may be of less importance in the opinion of the wage-earners than the right to organize and bargain collectively. The sharp cleavage between an employer and his employees where the former refuses to recognize the union renders conciliation extremely difficult; there is no common ground on which to build.

In the administration of such a statute as the Industrial Disputes Investigation Act, expediency must be an important consideration and an article by Mr. F. A. Acland, Deputy Minister of Labour from September, 1908, to September, 1923, contains the statement:—

> "It has not been the policy of successive ministers under whose authority the Act has been administered to undertake the enforcement of these [penal] provisions . . . . . The usefulness of the Act is, perhaps, better determined in any event, less by the negative results in situations where the parties have, regardless of consequences, stayed deliberately aloof from its influences and operation than by the positive results obtained in situations where the parties have, whether cordially or reluctantly, brought their differences within the scope of the Act."[42]

In only 38 of the 729 disputes in which application was made to the department for a board of conciliation and investigation from the date of its becoming law to the end of March, 1930, were strikes not averted or ended. Boards were set up only in 499 of these cases. After application for a board has been made, the parties may arrive at a settlement and the services of a board become unnecessary. In some disputes it appears probable that mediation by an officer of the department will be successful and the time and cost of a board may be saved. Applications are received also for boards to deal with disputes involving less than ten employees which do not come within the Act. Finally, in disputes in which the consent of both parties is required for the appointment of a board, applications may be made by one party but consent refused by the other. The dispute between the Canadian railway companies and the shopcrafts in 1922 affords a striking illustration of the benefit of the Act to the general public as well as to those more immediately concerned with the dispute. The American railway companies gave notice to their shopmen of a reduction in wages and, the men opposing the decrease, the dispute was referred to the United States Railroad Labour Board. The decision of the board was for the reduction but the employees were unwilling to accept it. A nation-wide strike of railway shopmen was declared in the United States and lasted from July 1 to the end of September and "for an even longer period it partially paralyzed the transportation facilities of the nation and endangered the safety of the travelling public."[43] The return to work was on the basis of the board's decision. In Canada, the railways followed the example of the American companies in proposing a reduction of wages and there was opposition on the part of the shop crafts but the men observed the law and there was no strike in Canada. The dispute was dealt with by various boards of conciliation and investigation under the Industrial Disputes Investigation Act and the awards were accepted.

In connection with one class of workmen, as already indicated, there was some difficulty in the administration of the Industrial Disputes Investigation Act. The question of jurisdiction as between the Dominion and provincial authorities arose in the case of disputes involving municipal or provincial employees. The report of the Deputy Minister of Labour for the year ending March 31, 1919, states:—

> "When in the early days of the life of this statute, a dispute between a municipality and its employees would be brought to the attention of the department by means of an application for a board, it was the practice to establish a board of conciliation and investigation if the dispute affected any class of labour which could be regarded as a

[42] Canadian Law Times, March, 1916.
[43] U.S. Monthly Labour Review, Dec. 1922, p. 1.

public utility; also, in the absence of any distinct protest by the municipality on the ground of jurisdiction. In this way various municipal disputes affecting clerical workers were arranged; the question of jurisdiction was avoided rather than determined. At the same time various municipalities while not formally objecting to the establishment of a board of conciliation and investigation, for the settlement of a particular dispute, had questioned if the Act properly extended to a class of disputes in which the employer was a body created by and responsible to the government of a province."[44]

Owing to the increased unrest of the war period, a larger number of disputes occurred between municipal authorities and their employees and the matter of jurisdiction became more pressing. In 1917, employees of the Edmonton street railway, which is owned and operated by the city, applied for a board of conciliation under the Act, and it was duly established by the Minister of Labour. In this case, the municipality was unwilling to take any part in the proceedings and applied for a writ of injunction restraining the board from making any inquiry on the ground that no dispute existed within the meaning of the Act, those workers who had been responsible for the difficulty being no longer employed by the company.[45] "The injunction was not opposed by the Dominion authorities and no enquiry into the dispute took place before the board."[46] The question of the jurisdiction of the Dominion Parliament in disputes involving municipal employees was not specifically mentioned in this case but after its occurrence the department definitely adopted a policy of applying the Act only to disputes in which the employer was a provincial or municipal authority by joint consent of both parties to the dispute. From the close of the fiscal year, 1917-18, to March 31, 1923, twenty-one such disputes were referred to boards of conciliation and investigation under the Act but in nine other cases the consent of the employing body to the appointment of a board was refused. Another quotation from the Report of the Deputy Minister of Labour, 1918-19, is of interest at this point:

"The heads of municipalities have been by no means consistent in the attitude taken to the question of the applicability of the statute to municipal industrial disputes. For several years requests for conciliation boards came only from the employees and in no case from a municipality. The jurisdiction of the department, if questioned at all, was questioned by the municipality, but procedure under the statute was arranged by formal or informal consent of both parties. After the departmental ruling had been made that where the employer is a municipality, etc., no board will be established save by joint consent, pressing requests were received, in several cases from municipalities, that conciliation boards might be established. In two important cases such requests were received from the municipal officers of cities which had previously denied the jurisdiction of the statute. This inconsistency would have been immaterial if the employees had concurred in having the dispute referred to a board; but the employees, having in mind the treatment their application had previously received from the municipal officers, and being now aware that concurrence was optional, could not resist the temptation of imitating the previous action of the municipality and refusing concurrence, thus preventing an inquiry before a board of conciliation."[47]

In August, 1911, the power of the Dominion Parliament to enact such a statute had been challenged by the Montreal Street Railway Company[48] in connection with the appointment of a board of conciliation and investigation on the application of the company's employees. A temporary injunction restraining the board from proceeding with its inquiry was issued on October 27, 1911, but an application for a permanent injunction was refused by the Superior Court of Quebec on November 11, 1912. In a review of the case in June, 1913, the court upheld the constitutional validity of the Act on the ground that the subject-matter has a general or national importance and is connected with the peace, order and good government of Canada and, therefore, within federal jurisdiction under the British North America Act. The injunction restraining

[44] Annual Report of the Deputy Minister of Labour, 1918-19, pp. 13-14.
[45] *Labour Gazette*, Vol. 17, pp. 790, 898, 979.
[46] Annual Report of the Deputy Minister of Labour, 1918-19, p. 14.
[47] Idem.
[48] Report of Registrar of Boards of Conciliation and Investigation, 1913-14, pp. 222-226.

the board from inquiring into the alleged dispute was made permanent, however, the court holding that the manner of appointment of the board had not fully satisfied the requirements of the statute.

After the Montreal case, no question as to the validity of the Act was brought up in a court of law until the Toronto Electric Commissioners in August, 1923, applied for an injunction restraining the board of conciliation and investigation, which had been appointed by the Minister of Labour on the application of the commission's employees, from exercising any of the powers conferred on such a board by the Industrial Disputes Investigation Act. The argument on which the application was based was to the effect that it was not within federal jurisdiction to apply any such Act to persons employed by a municipality nor to legislate on matters affecting civil rights. An interim injunction was granted by Mr. Justice Orde on August 29 and proceedings by the Board were stopped, the judge taking the view that the federal Parliament was not competent to pass legislation permitting interference with the civil rights of employers and employees or with the municipal institutions of the province in any matter not included among the subjects enumerated in the British North America Act as being within the legislative authority of the Dominion Parliament. Application was then made by the Toronto Electric Commissioners for a permanent injunction against the board of conciliation and the case was heard by the late Mr. Justice Mowat, of the High Court Division of the Supreme Court of Ontario. Judgment was delivered on December 15. The application of the plaintiffs was refused, the judge holding that the matters dealt with in the Industrial Disputes Investigation Act were of "national concern" and therefore within federal jurisdiction, but since Mr. Justice Orde and Mr. Justice Mowat had disagreed on the same point of law and were judges of co-ordinate authority, the case was referred to one of the appellate divisions of the Supreme Court.[49] The judgment of the appeal court was in favour of the defendants. It was delivered by Mr. Justice Ferguson in April, 1924, and was concurred in by Chief Justice Mulock, Mr. Justice Smith and Mr. Justice Magee. The fifth member of the court, Mr. Justice Hodgins, dissented from the view of the majority and considered that the statute was one affecting property and civil rights and so *ultra vires*. He held, further, that as the Toronto Electric Commission was a body formed by provincial authority and operating only locally, it was not competent to the Dominion Parliament to legislate on matters affecting it. In reviewing the general character of the Act, Mr. Justice Hodgins was careful to state that the court was

> "not called on to determine whether the Dominion jurisdiction as to railways, other than those under provincial control, or as to shipping and navigation, will preserve this Act in its relation to railway employees, or those engaged in such shipping as may be considered a public utility."

The majority of the Ontario Court were of the opinion that the law was one providing machinery for conducting investigations into industrial disputes between certain classes of employers and their employees, "which disputes may, and in other cases will, develop into disputes affecting not merely the immediate parties thereto, but the national welfare, peace, order and safety and the national trade and business." While conceding that the Act affects property and civil rights and authorizes a board to inquire into industries that are in some cases local works carried on by municipalities, yet the court considered that according to "the true nature and effect of the enactment, the legislation is not law in relation to municipal institutions, local works, property and civil rights or matters purely local as these words are used in the British North America Act." The subject matter of the Industrial Disputes Investigation Act was

[49] Judicial Proceedings respecting Constitutional Validity of Industrial Disputes Investigation Act, 1907. Department of Labour, 1925, pp. 8-32.

regarded, therefore, as being within the scope of the federal legislative powers as laid down in the British North America Act.[50] The Toronto Electric Commissioners appealed this decision to the Judicial Committee of the Privy Council and the case was heard in November, 1924. The judgment delivered by Viscount Haldane on January 20, 1925, reversed the decision of the Ontario Supreme Court and declared the Act not to be within the competence of the Dominion Parliament. Lord Haldane expressed the concurrence of the Lords of the Judicial Committee with the opinion of Mr. Justice Hodgins in viewing the Act as one primarily affecting property and civil rights, a subject reserved exclusively to the provincial legislatures by the British North America Act except in the case of a national emergency.[51]

On March 12, 1925, the Minister of Labour introduced in the House of Commons a Bill to amend the Industrial Disputes Investigation Act, first to restrict its scope to labour disputes in connection with works which are clearly within Dominion jurisdiction and, second, to enable its application to disputes within the legislative jurisdiction of any province on the enactment by the legislature of that province of a statute declaring such disputes subject to the Dominion Act. Without restricting the general nature of the terms used in declaring the Act to apply to "employment upon or in connection with any work, undertaking or business which is within the legislative jurisdiction of the Parliament of Canada," certain undertakings are expressly stated to be included. These are works carried on in connection with navigation and shipping, railways, canals, telegraphs and other works connecting one province with another or extending beyond the bounds of any one province, works carried on by aliens or by companies incorporated under Dominion authority, or undertakings declared by the Parliament of Canada to be for the general advantage of the country as a whole or of two or more provinces. Disputes which the Governor in Council, by reason of any real or apprehended emergency, may declare to be subject to the Act are also among the enumerated classes of disputes. Following the adoption of these amendments, the Legislatures of Nova Scotia, New Brunswick, Manitoba, Saskatchewan and British Columbia enacted laws bringing the Dominion statute into force in their respective jurisdictions.[52] In Alberta, it has already been pointed out, an Act administered by the provincial authorities was pressed for by the miners' organization and the Labour Disputes Act[53] passed in 1926. This statute provided for the settlement of disputes within the province by boards of conciliation and investigation similar to those set up under the Dominion law. In 1928, the Alberta Federation of Labour petitioned the provincial government for an Act enabling the operation of the Industrial Disputes Investigation Act in Alberta. At the legislative session in that year, such a statute[54] was passed and the Alberta Labour Disputes Act was amended to limit its application to disputes outside the scope of the Dominion law. In Ontario and Quebec labour organizations have urged the enactment of statutes declaring the Industrial Disputes Investigation Act in force in these provinces but no action has been taken. In the rural province of Prince Edward Island, no proceedings under the Act have ever been required and no provincial legislation has been passed.

Involving as it does the right of a federal legislature to enact laws which are coercive in their operation in the industrial field, the question of the validity of the Industrial Disputes Investigation Act naturally brings to mind similar legislation in other federal states. In Australia and the United States, both of which countries have laws containing compulsory features, which provide for

[50] Ibid. pp. 17-32.
[51] Ibid. pp. 33-41.
[52] Nova Scotia, 1926, 5; New Brunswick, R.S. 1927, c. 158; Manitoba, 1926, c. 21; Saskatchewan, R.S. 1930, c. 254; British Columbia, 1925, c. 19.
[53] 1926, c. 43.
[54] 1928, c. 42.

the settlement of industrial disputes, there is no constitutional difficulty in regard to the statutes now in force, the Acts in question being specifically restricted to a field which is reserved under the terms of the constitution to the federal legislature. In Australia, the Commonwealth Conciliation and Arbitration Act, 1904, and the Industrial Peace Act, 1920, cover only disputes extending beyond one state and such enactments are obviously within the limits of the constitution which includes " conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state " in the list of enumerated subjects with respect to which the federal Parliament has power to legislate. The American constitution, which the Australian follows in conferring the residuary powers of legislation on the states, reserves to Congress the right to enact laws with regard to commerce between the various states of the Union. The regulation of labour engaged in inter-state commerce falls, according to judicial interpretation, within the scope of the federal authority and machinery for intervention in railway labour disputes by the United States Government has been provided for since 1888, when provision was made for voluntary arbitration and investigation by special tribunals of labour difficulties on inter-state railways. At the present time, the Australian system is one of compulsory reference to arbitration in the case of inter-state disputes with prohibition of strike or lockout and enforcement of awards under penalties. The American system is one of compulsory investigation of inter-state railway labour disputes, with no restriction on the right to strike or lockout and no enforcement of awards, but reliance is placed on the influence of an enlightened public opinion to restrain the desire to strike or lockout and to compel acceptance of awards. In neither country has the law been successful in eliminating strikes altogether but in both countries these statutes are to be credited with composing many differences which would have resulted, in all probability, in a stoppage of work, were it not for the machinery thus provided and the respect accorded the law by the majority of those concerned. It is impossible to estimate the value of these laws, as of the Industrial Disputes Investigation Act, in restraining employers and work-people from permitting matters in dispute to cause a stoppage of work which the very enactment of such a statute has declared to be opposed to public opinion. Neither can formal reports on the operation of the Canadian Act give any adequate idea of the importance of the conciliation work which results in satisfactory adjustments through correspondence or mediation by an officer of the department and renders unnecessary the appointment of a board of conciliation and investigation.

Of the twenty-three years since the enactment of the Industrial Disputes Investigation Act by a Liberal Government, six have been years of Conservative administration and four years under coalition or union governments. No attempt has been made by either of the political parties to repeal the Act, and no amendments, undermining the principle of the community's right to be informed regarding a dispute in certain industries before a stoppage is permitted, have been proposed; the changes made in 1918, 1920, and 1925 only extend this principle and were designed to simplify procedure under the Act.

The attitude of the employers and workmen towards the Act appears, on the whole, friendly, the watchful and half suspicious attitude adopted at first having given way to one of co-operation in carrying out the terms of the statute and of seeking to amend it from time to time to facilitate procedure. It is to be expected that dissatisfaction with the findings of a board should occur occasionally and should colour the view taken of the statute itself for a time but as the personnel of each board of concilation may vary from another and as the nomination of members rests with the parties, the hope of a more acceptable award next time tends to allay any feeling of irritation. Since the meeting of the Trades and Labour Congress in 1918, the resolutions regarding the

Industrial Disputes Investigation Act which have been adopted have been in favour of its extension to cover other classes of employees, and, as indicated above, labour organizations in all the provinces urged the legislatures to pass enabling laws to permit the full operation of the Act within the provinces following the decision of the Privy Council.

Commissions of Inquiry into Labour Disputes

The Inquiries Act[55] empowers the Governor in Council to cause "an inquiry to be made into and concerning any matter connected with the good government of Canada." Persons appointed as royal commissioners to conduct inquiries have power to summon witnesses and to require the giving of evidence on oath and the production of any documents deemed necessary to the investigation. Matters which are more particularly the concern of one department of the government may be made the subject of inquiry by one or more commissioners appointed by the Minister concerned, with the approval of the Governor in Council.

The first Royal Commissioner appointed to investigate a strike in a particular industry in Canada, and the only one appointed prior to the enactment of the Conciliation Act, was Mr. R. C. Clute, Q.C., of Toronto, later Justice of the High Court of Ontario, who was commissioned to inquire into mining conditions in British Columbia in 1899. Reference to this commission was made above in outlining the history of the Conciliation Act.

Since the passing of that statute and the Industrial Disputes Investigation Act, it has been found necessary or expedient on numerous occasions to deal with an industrial dispute through a commission under the Inquiries Act rather than by the mediatory efforts of an officer of the Department of Labour or by a board of conciliation and investigation under the latter Act. Various factors involved in a dispute may contribute to the decision to appoint a commission of inquiry but three appear to have operated most frequently. These are demands for recognition of a union by the employer, rivalry between unions and the extension of a dispute to cover several employers or more than one industry. The deadlock resulting from the refusal of an employer to recognize the workers' organization by bargaining with its representatives is, as indicated before, a particularly difficult problem for a conciliator. It is rarely a matter that can be adjusted by each party conceding a little here and a little there in order to reach a basis of agreement. Where the one point, or the principal point, at issue is whether or not the employer shall agree to negotiate with the official representatives of a union of which his employees and other workers in the same industry are members, the point is conceded or refused, but settlement of such disputes may be arrived at by conceding some other point, such as changes in wages or hours, or by consenting to deal with a committee of the employees while refusing to negotiate with the union's official representatives, and the employees may accept such conditions as the best terms they can get. It is a matter of policy on both sides and since the principle is the fundamental one of labour organization, it is likely to be bitterly fought for where the claim is disputed. Occasionally it is a case of one side or the other obtaining the substance without the name or accepting the shadow without the substance. Over half the commissions which have been appointed to deal with labour disputes since the establishment of the Department of Labour have been confronted with a difference arising in whole or in part from the workers' demand for the right to bargain collectively and the employer's claim to the right to deal only with his own employees. All but two of the disputes so arising concerned the mining industry and all but one occurred after the enactment of the Industrial Disputes Investigation Act.

[55] R.S. 1927, c. 99.

Several strikes occurring wholly or partly as a result of rival unions claiming recognition from the employer or involving disputes between unions were the subject of inquiry by Royal Commissions during the war years. Such situations also present difficulties in conciliation, and it has been deemed wise to deal with them through commissions of inquiry rather than through tripartite boards under the Industrial Disputes Investigation Act. Until the amendment to the Industrial Disputes Investigation Act in 1920, disputes involving more than one employer, or more than one trade union, could be referred to a single board of conciliation and investigation only if each of the employers or unions affected signed the application for a board. The establishment of different boards to deal with these disputes would be a cumbersome and costly method. Accordingly, several royal commissions were appointed to deal with such disputes during the war. This method was followed in connection with labour troubles in the munitions industries in Toronto and Hamilton in 1916, in the mining industry about Cobalt in the same year, in shipyards in Quebec and in British Columbia, in the coal, steel, and shipbuilding industries of Nova Scotia, in the Winnipeg metal trades, between British Columbia shipowners and their employees in 1918 and in the Nova Scotia and New Brunswick coal industry in 1920. Disputes affecting several employers might be disputes caused in part by a refusal to recognize the employees' union or by the rivalry between two unions. Two or all three factors entered into different cases. In 1907, before the Industrial Disputes Investigation Act was passed, a threatened strike of telephone operators in Toronto led to the appointment of a royal commission to inquire into the cause of the trouble. In 1909, disputes in the cotton factories in Quebec were referred to a commission. In this industry a board of conciliation and investigation under the Industrial Disputes Investigation Act could be set up only with the consent of both parties, and when the employers refused their consent to the appointment of a board, the Government decided to investigate the matter through a royal commission. In 1923, commissioners were appointed to conduct an inquiry into the causes of the recurring unrest among the steel workers at Sydney, Nova Scotia, which had created conditions occasioning the calling out of the militia to aid in maintaining order. With the exception of the three commissions in the telephone, cotton, and steel industries, all royal commissions appointed since 1900 to deal with particular disputes appear to have involved one or more of the three factors referred to above: union recognition, disputes between unions, or disputes affecting several employers.

A strike in February, 1903, of certain Canadian Pacific Railway employees at Vancouver, organized in the United Brotherhood of Railroad Employees, was supported by sympathetic strikes of railroad men and allied trades at other points in British Columbia, Calgary and Winnipeg and by a strike of miners on Vancouver Island in order to withhold coal from the Canadian Pacific Railway Company and, ostensibly, to obtain recognition for their own union, the Western Federation of Miners, locals of which were organized at the time. The W.F. of M. and U.B. of R.E. were both affiliated with the American Labour Union, an organization of strong political character and socialistic sympathies which, as a much weakened body, merged in the Industrial Workers of the World in 1905.[56] In April, 1903, the Dominion Government commissioned the Honourable Gordon Hunter, Chief Justice of British Columbia, and Reverend E. S. Rowe of Victoria to inquire into these disputes. The strikes were settled during the sittings of the commission or immediately after.[57] The U.B. of R.E. had taken its stand on the matter of recognition of the union but the conduct of the strikes and affairs of the unions concerned were such as to lead the com-

[56] The W. F. of M. became affiliated with the American Federation of Labour in 1911, and re-organized as the International Union of Mine, Mill and Smelter Workers in 1916.

[57] Report of Royal Commission on Industrial Disputes in British Columbia, July, 1903.

missioners to regard the U.B. of R.E., the W.F. of M. and the American Labour Union, not as trade unions at all, but as secret political organizations.

Other commissions dealing with disputes arising in part at least from claims for recognition of unions were concerned with the United Mine Workers of America on Vancouver Island in 1913, the Western Federation of Miners around Cobalt and at Thetford Mines in 1916, the Amalgamated Mine Workers of Nova Scotia, the metal trades councils of Winnipeg and Vancouver in 1918, and of the International Association of Iron, Steel and Tin Workers of America at Sydney in 1923. Rivalry between unions was a factor in the trouble in the shipyards of different companies in Quebec Province in 1916 where the National Catholic Unions and the "internationals" each claimed members. In 1917 the counter-claims of the Provincial Workmen's Association and United Mine Workers of America in Nova Scotia were among the difficulties to be dealt with by a royal commission and it was agreed to form a new organization, the Amalgamated Mine Workers of Nova Scotia. In the following year, this union claimed recognition from different companies and two of the same commissioners were appointed to inquire into the dispute which had arisen regarding this and other matters.

Commissioners have been reluctant to make pronouncements on the merits of claims for union recognition or of rival unions. In the dispute in the shipyards in Quebec in 1918, the number of members in the "national" unions exceeded that in the "internationals," and the employers were willing to bargain with the former. The commission was, accordingly, instrumental in having agreements signed with the nationals. In the case of the local union of the Western Federation of Miners at Cobalt in 1916, the Amalgamated Mine Workers of Nova Scotia in 1918 and the metal trades council of Winnipeg in 1918, the respective commissions recommended that the employers should meet a committee of their own employees. In the shipyards dispute in British Columbia in 1918, the commissioners felt that the agreement demanded by the Vancouver metal trades council called for a closed shop and two commissioners agreed that in the case of the munitions industry carried on by public funds "there should be no interference with the right of any individual to obtain employment." In other cases, the commissioners made no recommendation in the matter of recognition of unions.

BULLETINS

OF THE

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Bulletin 1.—Joint Councils in Industry.

Bulletin 2.—Report of a Conference on Industrial Relations held at Ottawa, February 21-22, 1921.

Bulletin 3.—Joint Conference of the Building and Construction Industries in Canada, held at Ottawa, May 3-6, 1921.

Bulletin 4.—Employees' Magazines in Canada. (Out of print).

Bulletin 5.—Canada and International Labour Conference.

Bulletin 6.—International Labour Organization,—Laws of Canada bearing on Draft Conventions and Recommendations. (Out of print).

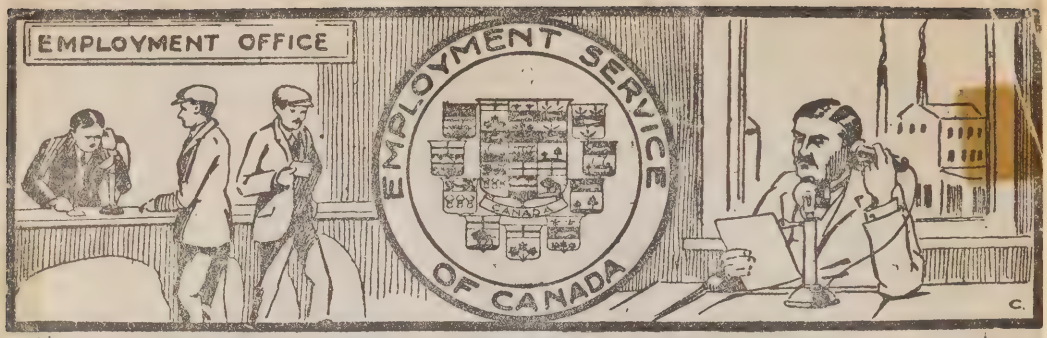
Bulletin 7.—Canadian Railway Board of Adjustment No. 1, Report of proceedings of Board from September 1, 1920, to September 30, 1923.

Bulletin 8.—National Conference Regarding Winter Employment in Canada—Held at Ottawa, September 3-4, 1924.—Report of Proceedings.

Bulletin 9.—Canadian Railway Board of Adjustment No. 1, Report of Proceedings of Board from October 1, 1923, to September 30, 1927.

Bulletin 10.—Canadian Railway Board of Adjustment No. 1, Report of Proceedings of Board from October 1, 1927, to September 30, 1930.

Copies of any or all of these Bulletins may be obtained from the Department of Labour, Ottawa.



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